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Mr. Chairman and members of the Committee, I am Thomas Dunne, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response at the Environmental Protection Agency (EPA). Thank you for inviting me to appear here today to discuss EPA's Oil Spill Prevention, Control and Countermeasure (SPCC) program. My testimony will address issues regarding EPA's recent efforts to streamline the SPCC requirements for a number of industry sectors, to extend the compliance dates for modification and implementation of SPCC Plans, and to provide guidance to EPA inspectors on the SPCC requirements.

BACKGROUND

The Federal Water Pollution Control Act (FWPCA) of 1970 required the President to issue regulations that would establish procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA. A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DoT) and EPA in 1971 set out the definitions of transportation- and non-transportation-related facilities and agency responsibilities. Among other things, this MOU identified that the regulatory authority for all oil storage and transfers of oil within a non-transportation-related facility rests with EPA. Another MOU between EPA, the U.S. Department of Interior (DoI), and DoT in 1994 re-delegated the responsibility to regulate certain offshore facilities from DoI to EPA.

In 1973, EPA originally promulgated the SPCC regulations under the CWA. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or completely buried oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that because of their location could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines. The fundamental requirement established by this rule that has not changed in nearly 30 years is that facilities covered by these regulations are required to prepare an SPCC Plan and that Plan must be certified by a licensed Professional Engineer (PE).

Since the original regulations were promulgated, EPA has proposed amendments to the SPCC requirements a number of times to reduce reporting burdens and to clarify certain requirements, to make technical modifications, and to add elements like a response plan requirement for facilities without secondary containment, updated integrity testing requirements, prevention training, and an evaluation of tank brittle fracture conditions (brittle fracture is a metallurgical term for tank side wall failure under certain conditions). Some of these proposed amendments were driven by the catastrophic storage tank failure at the Ashland Oil facility in Pennsylvania and a subsequent task force and GAO report in which recommendations were presented to EPA to improve oil spill prevention.

In 2002, EPA published final amendments to the original SPCC regulations. These amendments included a number of relief and clarification provisions, such as raising the threshold quantity for applicability, increasing the de minimus container size, exempting certain underground storage tanks, offering the flexibility of the environmental equivalence option, and introducing a flexible SPCC Plan format. New provisions included certain tank integrity testing requirements and brittle facture evaluation considerations.

After publication of this rule in 2002, several members of the regulated community filed legal challenges to certain aspects of the rule. All of the issues raised in the litigation have been settled except the definition of navigable waters (this issue is currently before the U. S. District Court for the District of Columbia). The Agency published in the Federal Register the results of the settlement discussions; the results also are included as an attachment to my testimony.

Since then, EPA has extended the dates for revising and implementing SPCC Plans several times primarily to provide the regulated community with sufficient time to understand the 2002 revised rule and clarifications that resulted from the litigation. EPA has made a dedicated effort to listen to the concerns of the regulated community and to take action to address these concerns while at the same time maintaining protection of public health and the environment by preventing the discharge of oil to navigable waters.

WHY DO WE CARE ABOUT OIL SPILLS?

EPA has information from the National Response Center database that shows that from 1980 to 2001 thousands of oil-related spills occurred annually into inland navigable waters. These spills result in considerable environmental, response and socio-economic costs. As you know, oil spills contaminate drinking water, impact fisheries, agriculture, tourism and recreation, cause natural resource damage, and harm wildlife. EPA believes that the SPCC program is working, with oil spills from regulated facilities decreasing even though oil consumption has increased.

It costs far less to take reasonable steps to prevent an oil spill than it does to clean it up. And, as demonstrated in the actions described below, EPA has worked to establish flexible and appropriate oil spill prevention requirements for the wide variety of industries and facilities that produce, store, or use oils. These proposed actions to tailor the SPCC requirements are an effort to improve compliance with the oil spill prevention rules, which EPA believes will lead to

increased oil spill prevention and protection of the nation's water resources from the threats posed by oil spills.

ACTIONS BY EPA ON SPCC

Following settlement of the litigation, EPA met with trade associations and other members of the regulated community who raised concerns about various provisions in the SPCC requirements. It is well known that the SPCC requirements apply to a significant number of industry sectors and that "performance-based" requirements are much preferred to "command and control" or "one-size-fits-all" approaches. The SPCC requirements are designed to be performance based, offering a range of flexibility so that appropriate requirements can be tailored to particular industry sectors. Despite our past efforts in this regard, we acknowledged and welcomed opportunities to meet with the regulated community to discuss their particular issues and to consider whether additional modifications or clarifications of the rule requirements were necessary. The remainder of my testimony will generally describe the input we received and how we are responding to those concerns.

EXTENSION OF COMPLIANCE DATES

EPA has issued a proposed rule to extend the dates by which facilities will need to amend and implement an SPCC Plan to October 31, 2007. EPA is taking this action to allow time for the Agency to finalize amendments to the SPCC requirements that were recently proposed (and which I will describe below). We also want to provide sufficient time for facilities to understand these modifications, to review and understand the guidance we recently issued, and to make appropriate changes to their facilities and to their SPCC Plans as a result of the rule modifications and the guidance. Finally, the Agency is concerned that the effects of the recent hurricanes on many industry sectors might adversely impact their ability to meet the upcoming compliance dates if no extension is provided.

SMALL BUSINESS

EPA has participated in several Small Business Administration (SBA) Roundtable Meetings to hear feedback from not only SBA but also from a variety of industry sectors such as the food, construction, electric utility, aviation, and automotive industry. As a result of these meetings, EPA embarked on an effort to streamline, focus, and clarify the SPCC requirements and to provide guidance to EPA inspectors to illustrate the flexibility built in to the regulations. In the fall of 2004, EPA published two Notices of Data Availability (NODAs). The first NODA made available and solicited comments on submissions to EPA suggesting more focused and streamlined requirements for facilities subject to the SPCC rule that handle oil below a certain threshold amount of oil. The second NODA made available and solicited comments on whether alternate regulatory requirements would be appropriate for facilities with oil-filled and process equipment. Comments submitted on these NODAs informed our development of the recent proposed rule to modify the SPCC requirements.

As a result of the Roundtable sessions and comments on the NODAs, we learned that the major concern for small businesses is the requirement for certification of SPCC Plans by a

licensed Professional Engineer (PE). Consequently, after consideration of options, we developed the approach in the proposed rule that would provide small facilities (those handling less than 10,000 gallons of oil) the option to self-certify their plans. In addition, we are proposing additional flexibility for these smaller facilities with respect to tank integrity inspections and facility security.

AIRPORTS

In meetings with, and correspondence from, airport trade association representatives and an airport coalition, EPA learned about the concerns of airport facility operators with the SPCC requirements and Federal Aviation Administration (FAA) standards for airport mobile refuelers. The 1971 MOU with DoT vests regulatory authority for all oil storage and transfers of oil within a non-transportation-related facility with EPA. We recognize the unique circumstances regarding these mobile refueling vehicles and the difficulty associated with providing sized secondary containment while the vehicle is moving, engaged in transferring fuel, or parked. Given these unique circumstances, EPA agrees that airport owners and operators should have greater flexibility in fuel spill prevention and has proposed to modify the regulations to make airport mobile refuelers subject to the general secondary containment requirements, rather than the sized secondary containment requirements. EPA believes the general secondary containment requirements are more flexible and reflect the kinds of active and passive fuel spill prevention measures already used by many airports in their fueling operations.

For example, some large airports have elaborate drainage systems that can capture runoff from all paved areas. The runoff is contained and measures are taken to ensure that any oil or fuel that might be contained in this runoff is separated from water before the runoff is discharged to a waterway. This is a reasonable approach to oil spill prevention and it satisfies the requirements of the SPCC regulations. For smaller airports that may not have such a system, under the general containment requirements the airport owner and operator would determine the likely amount of fuel that could be spilled from the mobile refueler, where it would spill from and when (e.g., a leak from a hose), and institute appropriate active or passive measures and response capability (such as diversions or absorbent materials) to ensure that the fuel does not get discharged to a waterway.

AGRICULTURE

Through the SBA Roundtables and in separate meetings and correspondence with agricultural representatives and the U.S. Department of Agriculture (USDA), EPA has learned of the concerns of farmers with respect to compliance with the SPCC requirements. EPA recognizes that the number of farms covered by the SPCC regulations is significant and that the unique characteristics of farms pose unique challenges to SPCC compliance. Consequently, EPA is taking several steps: initially, farmers will have the option to take advantage of the flexibility offered by the small facility proposal and the exemption for motive power described below. Further, EPA is proposing to extend the 2002 rule compliance dates for all facilities including farms until October 31, 2007; and to extend the 2002 rule compliance dates indefinitely for farms storing 10,000 gallons of oil or less. Finally, EPA has committed to work with USDA and farm representatives to determine how to properly address farms under the

SPCC regulation.

EDIBLE OILS

EPA has also met with and received correspondence from the food industry regarding animal fats and vegetable oils (AFVO) and the SPCC requirements. This sector has long maintained that food oils are not the same as petroleum oils and therefore should have different regulatory requirements that reflect these technical differences. Indeed, the Edible Oil Regulatory Reform Act (EORRA) of 1995 required most Federal agencies to differentiate between, and establish separate classes for, various types of oil, specifically, between animal fats and oils and greases, and fish and marine mammal oils and oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. In our current proposal, EPA is requesting input on whether specific provisions in the SPCC requirements need to be modified to account for differences between AFVO and petroleum oils.

EPA has previously reviewed this issue and determined that many animal fats and vegetable oils can be harmful to the environment. Although we might enjoy consuming various food oils in small amounts, a large spill of oil into a waterway could contaminate drinking water supplies and cause oxygen depletion, fish kills and other aquatic impacts. At the same time, EPA does recognize that there are some requirements in the SPCC rules that are not appropriate for AFVO – for example, the requirements for onshore oil production facilities – and we are proposing to remove those requirements.

ELECTRICAL UTILITIES AND OTHER OIL FILLED EQUIPMENT USERS

Regarding the oil-filled operational equipment issue, EPA met with and received correspondence from several stakeholders about the SPCC requirements and the nature of oil-filled operational equipment in comparison to other bulk oil storage containers. Oil-filled operational equipment includes transformers, hydraulic equipment and lubrication systems. In light of these issues raised and the unique nature of this kind of equipment, EPA is offering in the current proposal a streamlined regulatory option. A facility owner or operator can choose to satisfy the SPCC requirements through inspection and monitoring systems and contingency planning rather than through general containment requirements. In doing so, the proposal provides the electrical utilities and other industrial facilities with an additional prevention option for this unique equipment.

MOTIVE POWER

In contrast to the airport mobile refuelers described above, a “motive power container” is an integral part of a motor vehicle (including aircraft) that provides fuel for propulsion or some other operational function, such as lubrication of moving parts or for operation of onboard hydraulic equipment. Motive power containers on vehicles used solely at non-transportation-related facilities fall under EPA jurisdiction and are subject to the SPCC regulation. The types of vehicles and facilities that are potentially subject to the SPCC requirements solely because of the oil contained on-board the vehicles are: buses at terminals or depots; recreational and some sport utility vehicles parked at dealerships; heavy earthmoving vehicles at construction sites; aircraft;

and large farming and mining equipment. EPA recognizes that, in most cases, the SPCC requirements are not practical for motive power containers on-board these types of vehicles at SPCC regulated facilities. Consequently, EPA is proposing to exempt them from coverage under the rule. However, transfers between bulk storage containers and these vehicles remain subject to the SPCC requirements.

OIL EXPLORATION AND PRODUCTION[1]

The oil exploration and production industry has raised concerns about the SPCC requirements. Such concerns include requirements applicable to produced water, the costs and practicality of certain compliance requirements (particularly those related to secondary containment), and potential impacts on the nation's marginal wells. Although our current proposal was originally intended to address only certain targeted areas of SPCC requirements, EPA is working to identify additional areas where regulatory reform may be appropriate. For these additional areas, the Agency expects to issue a proposed rule in 2007. In the current proposal, EPA requests comments from stakeholders on the scope of potential future rulemakings. Additionally, EPA in conjunction with the Department of Energy will be conducting an energy impact analysis of the SPCC requirements, and will consider the results of this analysis to inform any future rulemaking.

While EPA is not taking any specific action with respect to the oil exploration and production industry at the present time, this sector can take advantage of the small facility and oil-filled operational equipment flexibility offered by EPA's proposed rule and can examine the additional flexibility offered by other provisions as described in the SPCC guidance described below. EPA is willing to work with this sector to determine whether other appropriate requirements exist to increase compliance and thereby reduce the amount of oil lost to water.

EPA GUIDANCE

Finally, EPA has issued the SPCC Guidance for Regional Inspectors. This guidance is intended to assist regional inspectors in reviewing a facility's implementation of the current SPCC rule. The document is designed to foster a better understanding of how the rule applies to various kinds of facilities and to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements. Another reason for the guidance is to respond to stakeholder requests for consistent national policy on several SPCC-related issues.

The guidance is available on our website both to owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public. EPA welcomes comments on this guidance; it is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments. EPA believes it is important for all stakeholders to review, understand and make use of this guidance. The guidance should clarify many of the recent issues raised by the regulated community.

[1] Note this section does not include any information related to exploration and production in the Outer Continental Shelf.

CONCLUSION

EPA has made a concerted effort to address the concerns of various sectors of the regulated community regarding the SPCC regulations while maintaining an environmentally protective SPCC program. In fact, EPA estimates that, overall, the proposed amendments would reduce annual compliance costs by $98 million. EPA estimates that the proposed rule would lower compliance costs by $24 million for facilities with less than 10,000 gallons of oil storage capacity. The most important consideration, however, is that EPA is working to make compliance easier thereby leading to greater oil spill prevention and protection of public health and the environment.